

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.
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Rios

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JUDITH B. MEMBLATT, :
 :
 : CV-05-1021 (RJD) (LB)
 Plaintiff, :
 :
 : November 10, 2005
 v. :
 :
 : Brooklyn, New York
 JAIME A. RIOS, et al., :
 :
 :
 Defendants. :
 :
 :
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TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE
BEFORE THE HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: JUDITH B. MEMBLATT, PRO SE

For the Defendant: CONSTANTINE SPERES, ESQ.
MADALEINE S. EGELFELD, ESQ.
SALLY UNGER, ESQ.
JOHN QUINN, ESQ.

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transcript produced by transcription service

1 THE CLERK: Civil cause for initial conference,
2 docket number 05-CV-1021, Memblatt versus Rios, et al. If
3 the parties would please state your names for the record.

4 Ms. Memblatt?

5 MS. MEMBLATT: Judith B. Memblatt, plaintiff pro
6 se.

7 MS. UNGER: Sally E. Unger, of counsel to the law
8 offices of Madaleine Egelfeld, for defendant Karen
9 +Koslowitz.

10 MR. SPERES: Constantine Speres from the New York
11 State attorney general's office for the State defendants.

12 MR. QUINN: John Quinn of the law firm of Renfroe
13 & Quinn for the private defendants Thomas Manton (ph),
14 Gerard Sweeney (ph) and Mike O'Reilly (ph).

15 THE COURT: Good afternoon, Ms. Memblatt. Good
16 afternoon, Ms. Unger. Good afternoon, Mr. Speres and good
17 afternoon, Mr. Quinn.

18 I was informed by my clerks, which is why we
19 delayed coming on the bench, that we were waiting for an
20 additional defense attorney. Who is it that I'm supposedly
21 missing?

22 MS. UNGER: Madaleine Egelfeld is on her way as
23 well, but she instructed me to go forward without her.

24 THE COURT: You're from her office.

25 MS. UNGER: Excuse me?

1 THE COURT: You're from her office?

2 MS. UNGER: We're actually co-counsel. I'm from a
3 separate office.

4 THE COURT: Okay. But it's for the same
5 defendant?

6 MS. UNGER: Yes.

7 THE COURT: Then we're safe, okay. I was trying
8 to figure out who we were missing. This is an initial
9 conference before the Court.

10 Ms. Memblatt, there was some confusion because my
11 order setting this conference said that the 26(f) meeting
12 should take place prior to the conference. However,
13 unbeknownst to me, there had been applications made to Judge
14 Dearie, who is the assigned district judge on the case, to
15 forestall all discovery in the case, so that there could be
16 motions made in lieu of answers to the complaint.

17 In light of that, the state system is somewhat
18 different than the federal system. In the federal system,
19 we work as magistrate judge and district judge in tandem.
20 However, in this district, magistrate judges handle all
21 pretrial proceedings by local rule. So any applications
22 regarding discovery, adjournments should be made to my
23 attention. Going to Judge Dearie will only confuse matters
24 and will not simplify anybody's life.

25 I set the conference not knowing that there were

1 applications that were going to be made to move in lieu of
2 an answer, so that was our first mis-step, and so I
3 apologize for any confusion that my order caused. I then
4 stayed the response to the complaint and stayed any
5 discovery obligation until we came to today's conference, so
6 we could get sorted out who was intending to move against
7 the complaint.

8 This is a 1983 action brought. Ms. Memblatt, I've
9 read your complaint. It took me a while. You started with
10 OCA as a court attorney back in 1993. You report that there
11 were a number of things that happened in 1994, 1995 and
12 1996.

13 The first mention of what you call an adverse
14 action happens in September of 2002. It's in paragraph 97
15 of your complaint, where you say that Judge Rios reassigned
16 the counsel voucher job to somebody in chambers, which you
17 say again was an adverse impact on your job. You then say
18 in paragraph 134 that in August of '03, he again assigned
19 Newsome to maintain files of the appellate division
20 decisions, and that that was an adverse impact.

21 There is of course crossover between 1983 and
22 employment discrimination actions. This is a complaint
23 under 1983 alleging religious and racial discrimination and
24 retaliation. My question, ma'am, is why did you choose not
25 go to through the EEOC process on a complaint of employment

1 discrimination?

2 MS. MEMBLATT: For one thing, you're talking in
3 terms of bringing a Title VII complaint?

4 THE COURT: That's generally how we see religious
5 and race discrimination claims.

6 MS. MEMBLATT: It's my understanding that 1983 is
7 separate and apart from Title VII.

8 THE COURT: It is. It's only a question. It
9 doesn't affect the jurisdiction of the Court.

10 MS. MEMBLATT: There has also been at least one
11 district court ruling saying that because of the personal
12 exemption for judicial staff in Title VII, that it would not
13 be applicable to my position in any event.

14 THE COURT: I understand what you're saying.

15 MS. MEMBLATT: Which is another reason.

16 THE COURT: Let me ask one other question, then.
17 Since you know that 1983 has a three-year statute of
18 limitations, that you can only bring a claim in federal
19 court under 1983 three years from the date that the claim
20 accrues, why are you giving me so much information about
21 things that happened well before the statute of limitations?

22 MS. MEMBLATT: Because I believe that under a
23 hostile work environment theory, you're entitled --

24 THE COURT: Again, I think you're mixing Title VII
25 causes of action with Section 1983 causes of action.

1 MS. MEMBLATT: I also have of course state causes
2 of action. But it was my intent in bringing --

3 THE COURT: Well, the state causes of action pose
4 a separate problem for you. Let me just -- and I note for
5 the record that we are joined by Ms. Unger's associate, Ms.
6 Egelfeld?

7 MS. EGELFELD: Egelfeld.

8 THE COURT: Egelfeld. I'm sorry, I can't read
9 your writing that well. If you want to sign on to the
10 appearance sheet at the end of this --

11 MS. EGELFELD: Yes.

12 THE COURT: -- we'll give you an opportunity to do
13 so.

14 Ms. Memblatt, you don't need to thumb through the
15 complaint today. I was asking general questions that were
16 in my mind in going through your complaint.

17 MS. MEMBLATT: Actually, Judge, it was my
18 understanding that we were basically here for the purposes
19 of setting forth a schedule as far as the motions,
20 particularly since the discovery --

21 THE COURT: We are, but at any initial --

22 MS. MEMBLATT: And that anything that related to
23 the substance of the complaint is something that would be
24 addressed presumably in motions in writing.

25 THE COURT: Well, every judge handles their own

1 courtroom in their own way.

2 MS. MEMBLATT: Of course, your Honor.

3 THE COURT: And I always like to talk about, since
4 I've taken the time and it's fresh in my mind to review the
5 entire complaint -- I always like to raise these as initial
6 matters, because these were things that were going through
7 my head when I'm reviewing the complaint.

8 Let me also say that because you're in federal
9 court and the state has immunity under the Eleventh
10 Amendment for any action for damages, you can't sue anybody
11 in their official capacity.

12 MS. MEMBLATT: Judge, I'm not suing anyone in
13 their official capacity.

14 THE COURT: Okay, because that was something that
15 I believe the defendants, in some of their papers believed,
16 that you were suing people in their official capacity.

17 MS. MEMBLATT: Well, I -- I'm sorry, your Honor.

18 THE COURT: It's okay. I'm raising things that I
19 think are going to be addressed, without even getting to the
20 defendants raising their hand.

21 MS. MEMBLATT: I think as far back as the
22 inception of the case, in the earliest communications, Mr.
23 Speres in one of his letters had indicated that it was his
24 presumption that the defendants were being sued in their
25 official capacity. And in a writing back to him, I stated

1 there is no reference in here, in the complaint, specifying
2 that anyone is being sued in their official capacity,
3 because there would be no jurisdiction of this Court over
4 that.

5 THE COURT: I'm just raising the obvious points
6 here. And one of the things that I certainly wanted to
7 address, Ms. Memblatt, which I'm more than glad to hear from
8 the other side as well on -- this case was initially sent
9 out for mediation. That's what Judge Dearie did when it
10 first hit the Court's docket. What happened with the
11 mediation?

12 MS. MEMBLATT: It was unsuccessful.

13 THE COURT: That I could tell you.

14 MS. MEMBLATT: We were all informed that we --
15 that the matter was confidential and that the substance of
16 the discussions could not even be discussed with the Court.

17 THE COURT: I guess what I'm asking, which I don't
18 need to go blow by blow what happened in the mediation -- I
19 like to ask plaintiffs at the initial conference what it is
20 that they're hoping to accomplish by bringing this action.
21 I am asking you the same thing.

22 MS. MEMBLATT: I'm seeking to be compensated for
23 the damages done to my -- the considerable if not total
24 damage done to my legal career through the actions of the
25 defendants, meaning all of the defendants, every single one

1 having personal involvement.

2 I am not interested in just pursuing the matter
3 for the sake of pursuing the matter, if it's possible to
4 settle it. It is my understanding -- well, I have not been
5 presented thus far with any offer in any context that would
6 lead me to believe that the defendants are serious about
7 settling the matter; at least not at this stage and not
8 until motions for -- the motions have been adjudicated that
9 they're bringing at this point.

10 THE COURT: For instance, let me just ask -- you
11 have claims for, as you put them, defamation. And
12 defamation has a short statute of limitations under state
13 law. How are we getting around that problem?

14 MS. MEMBLATT: Your Honor, if possible, I would
15 prefer to defer any --

16 THE COURT: Argument on the substance.

17 MS. MEMBLATT: -- argument to the written motions.

18 THE COURT: Okay. I'm trying to tell you that
19 with a fresh look at the papers -- I haven't met you, I
20 haven't met the defendants. I'm looking at the federal law,
21 so all of the Shepherd (ph) cases, I, II and III, the last
22 one being the one in 2003 that the Circuit upheld. Again,
23 this is after it was sent back twice by Judge Glasser.

24 But the language in Shepherd III is quite clear
25 that after there is a chance here on evaluating the

1 Pickering standards, the disruption and the value of the
2 speech, et cetera, but that's only to the judge that you
3 worked for. I don't see those claims as to the host of
4 characters that we have in this action, which I haven't
5 counted how many defendants but I --

6 MS. MEMBLATT: Judge, there are twelve defendants.
7 Again, I would ask to reserve any argument on this for the
8 motions.

9 THE COURT: Okay. Let me ask you, on behalf of --
10 Mr. Speres, I'm going to turn to you in the first instance.

11 MR. SPERES: Sure.

12 THE COURT: If you could address for me what the
13 state defendants -- I guess that's Rios, Lippmann, Fisher,
14 DeSole, D'Angelis, Gardner, Newsome and Higgins; is that
15 correct?

16 MR. SPERES: I believe that's correct. There are
17 eight.

18 THE COURT: Eight, that's it.

19 MR. SPERES: Yes.

20 THE COURT: What is their intention in this
21 matter?

22 MR. SPERES: We intend to move to dismiss the
23 complaint, your Honor. The one issue that you raised is the
24 Eleventh Amendment immunity issue. Now I know I raised that
25 in a letter with Ms. Memblatt, but if you read the

1 complaint, the way she describes each of the defendants is
2 in their official capacity. There is no mention --

3 THE COURT: You can make the argument in writing
4 because I don't know whether Judge Dearie is going to refer
5 the motion, so I don't want you to waste your time with me.
6 My question is, quite frankly, I don't see a motion to
7 dismiss against Judge Rios. And I'm being quite frank here
8 because I'd like to narrow what we get to and what we don't
9 get to.

10 In the Shepherd case, it was clear that there was
11 discovery before the Court of Appeals affirmed the judgment
12 of the district court. I can't imagine that this case on
13 the face of it is not going to be sufficient against Judge
14 Rios.

15 MR. SPERES: Your Honor, I respectfully disagree.
16 However, if it is not sufficient in all respects, there are
17 many claims against Judge Rios that I think a motion to
18 dismiss will get rid of, thereby narrowing the scope of
19 discovery, should a motion to dismiss not survive. For
20 example --

21 THE COURT: I think that's a fair statement. I
22 don't think that I need further explanation of that. As
23 I've tried to raise with Ms. Memblatt, I don't think that
24 because she's alleging a hostile work environment, for
25 instance, that that means that she gets to go past the

1 three-year statute of limitations. So things that happened
2 prior to -- the case was filed -- I'm sorry, I think it was
3 in February of 2005, so it would go back three years, to
4 2002, so things that were prior to that date.

5 MS. MEMBLATT: Of course, your Honor, in addition
6 to the religious discrimination, I have complaints of a 1983
7 conspiracy with respect to political discrimination.

8 THE COURT: But again, ma'am, you're going to have
9 to establish what your claims are. You have a lot of
10 factual allegations. But then when you were stating each of
11 your causes of action, you just referred back to the factual
12 allegations. Again, I said starting in paragraph 97, we've
13 reached 2002.

14 And prior to those factual allegations, we're in
15 time periods that may not be covered under Section 1983.
16 Whether you're claiming it's discrimination based on
17 political affiliation, discrimination based on religion,
18 discrimination based on race, conspiracy under 1985, any of
19 those, it really still is a three-year statute of
20 limitations.

21 MS. MEMBLATT: Right. I thought that it would be
22 best and perhaps easier, in view of the complexity and the
23 length of the situation involved, to get as comprehensive a
24 picture --

25 THE COURT: You're entitled to put history down to

1 inform people, but the people that are in the complaint
2 prior to the dates that we're going to be looking at for
3 purposes of statute of limitations, which I assume is one of
4 the -- and I don't mean to put anything in Mr. Quinn's mouth
5 or into Ms. Egelfeld's mouth. But I imagine that that's one
6 of the things that they're going to raise.

7 For instance, when you're talking about the -- and
8 I think you just said it -- political affiliation claims,
9 those go back to when you were first hired.

10 MS. MEMBLATT: The inception goes back to when I
11 was first hired. But what I do have in the complaint is
12 factual information, which includes circumstantial
13 information, which I believe in this sort of case, it's
14 appropriate to rely on.

15 THE COURT: You're entitled to put as much in it
16 as you want. But what I'm saying is --

17 MS. MEMBLATT: That these same individuals --

18 THE COURT: -- when it comes to the motion --

19 MS. MEMBLATT: Right.

20 THE COURT: -- it's not the facts that matter as
21 much as your theory of how those facts apply within Section
22 1983. Again, Section 1983 does not embody anything in
23 particular. It says the rights as guaranteed by the
24 Constitution and laws of the United States. Not every claim
25 of speech is a First Amendment claim, not every claim of

1 discrimination will qualify under 1983.

2 MS. MEMBLATT: The point that I was making is when
3 it comes to the defendants represented by Mr. Quinn's office
4 and by Ms. Egelfeld's and Ms. Unger, I am not speaking in
5 the complaint solely of matters that come before the statute
6 of limitations period, but I'm showing, within what I've put
7 forth there, the involvement of --

8 THE COURT: But again, they are -- I understand
9 what you're saying but --

10 MS. MEMBLATT: But the actions that are taken are
11 within the statute of limitations that I'm complaining about
12 as to them.

13 THE COURT: Quite frankly, I don't see it,
14 especially as to Mr. Quinn's -- the named defendants. It
15 looks like you're trying to, in some respects, be a whistle
16 blower to undo the political machine that exists, you say in
17 Queens, as it was found to exist in Brooklyn. But again,
18 that's not what this particular case is about.

19 MS. MEMBLATT: To an extent, Judge, I would
20 maintain that a big part of it is what this case is in fact
21 about.

22 THE COURT: Ms. Memblatt, it may be what you're
23 trying to make the case about, but you weren't fired back in
24 1994, 1995 or 1996. In fact, looking at some of the
25 allegations in the complaint, and I think it was said very

1 well in the last Shepherd case -- this is the Second Circuit
2 speaking:

3 "Despite exhaustive discovery, Shepherd has been
4 unable to produce an iota of evidence that Judge Bierman
5 (ph) terminated him to prevent him from speaking about
6 Bierman's alleged misconduct. At its core, Shepherd's
7 argument is that he was terminated because he threatened to
8 go forward and expose Bierman's corruption.

9 "As the district court observed, however, this
10 contention is disproved rather than proved by the act of
11 termination, since that act, as described by Shepherd, was
12 akin to an invitation to speak."

13 Here, I know that these allegations that you're
14 putting into this federal court complaint were things that
15 you gathered over a long period of time. That's clear.
16 I've looked through and the allegations do go back to the
17 beginning of your time with the judge. You've collected
18 things from his diary off his desk, you've collected things
19 to put into the Court's hands. You didn't do that before
20 you were fired.

21 MS. MEMBLATT: I don't believe that's correct. I
22 don't think I collected anything after I was fired.

23 THE COURT: No, I'm saying you collected it while
24 you worked there, but you didn't put it into the public
25 forum until after you were fired.

1 MS. MEMBLATT: Judge, I think that it's clear from
2 the complaint that I did have -- make statements which were
3 protected statements. Protected statements, it is my
4 understanding, do not have --

5 THE COURT: That's what you're going to argue --

6 MS. MEMBLATT: -- to be made in a public forum but
7 can be made internally.

8 THE COURT: It has to be about matters of public
9 concern. I don't know if a judge is having an affair with
10 somebody, that that's going to qualify as a matter of public
11 concern.

12 MS. MEMBLATT: Absolutely, and it also states in
13 my complaint that in the event during the December of 2003,
14 I believe it is, when I was coerced into taking annual leave
15 under threat of being fired, I attempted to raise misconduct
16 with two officials, Defendant DeSole and Defendant
17 D'Angelis, with Judge Rios present. He, at that time and in
18 their presence, threatened to fire me immediately rather
19 than offering me the --

20 THE COURT: But, Ms. Memblatt, again, I think that
21 -- and I have to be quite direct with you because you worked
22 in the court for a bunch of years, I've worked in the courts
23 for a bunch of years. This is a nightmare. The nightmare
24 may be in your life but certainly a nightmare for your
25 judge, that you are working in a court where everybody

1 depends on each other for confidentiality. Number one
2 cannon, right?

3 You become a law clerk. I understand that you may
4 not think confidentiality is one of your obligations, but
5 remember, in this particular instance, you were employed for
6 at least ten years before these actions that you're alleging
7 were adverse to your career.

8 MS. MEMBLATT: That's -- well --

9 THE COURT: I understand that there were comments
10 made that you have held on to by the secretary, who is not
11 your employer.

12 MS. MEMBLATT: It's my understanding she does not
13 have to be the employer to participate in an act of
14 discrimination.

15 THE COURT: Again, Ms. Memblatt, I'm trying to be
16 as direct and human to you as I can. You are spilling the
17 beans here. This is what you're doing. You're spilling the
18 beans on all of the corruption that was going on in your
19 chambers. But it's all personality driven, in a certain
20 respect.

21 MS. MEMBLATT: No, Judge, I respectfully disagree
22 with you, and I will litigate this as far as I have to
23 litigate it.

24 THE COURT: I know you will. That's obvious,
25 ma'am. But what I'm trying to say is you started in 1993.

1 If you read employment discrimination cases, which this is
2 not, if there are comments made over the course of time, in
3 order for it to be a hostile work environment under Title
4 VII, it has to be severe and pervasive. Severe and
5 pervasive has been held not to constitute stray remarks,
6 comments over time.

7 MS. MEMBLATT: Your Honor, I'm content to put
8 forth my allegations. I think, under the case law, that
9 there is no question that I've got viable causes of action.
10 As far as confidentiality is concerned, I think that it does
11 not protect anyone from engaging in acts of clear
12 misconduct.

13 Just as if someone who was in an internal position
14 in the -- and I think it's been recognized by the Supreme
15 Court in the federal cases, actually. If someone saw an
16 actual -- in a totally different scenario, nothing I'm
17 alleging -- saw an actual exchange of money in chambers, the
18 fact that they would otherwise be bound by confidentiality
19 is no --

20 THE COURT: But don't you think there's a
21 difference between that and somebody sleeping with somebody?

22 MS. MEMBLATT: Not --

23 THE COURT: There's not a difference in your mind?

24 MS. MEMBLATT: Not when --

25 THE COURT: Between getting money under the table

1 in a case or sleeping with somebody?

2 MS. MEMBLATT: Not when the somebody is a
3 prosecutor.

4 THE COURT: And let me ask you, Ms. Memblatt, did
5 you ever think that maybe you should call your judge and
6 talk to him about it or speak to him before you --

7 MS. MEMBLATT: Your Honor, what I did was, because
8 I did not think that that would have led to anything -- I
9 would not have thought that would have led to anything other
10 than me being immediately fired, so I tried --

11 THE COURT: You thought it was better to bring it
12 outside of his chambers, to call to the person that you're
13 accusing of sleeping with the judge.

14 MS. MEMBLATT: To the person who appeared in the
15 courtroom on a routine basis at that --

16 THE COURT: But again, you don't think that was
17 overstepping your bounds?

18 MS. MEMBLATT: Overstepping my bounds, Judge? I
19 think I could be seen as being required to do more than sit
20 back and do nothing, when a judge and a prosecutor are
21 having an affair while there were criminal defendants --
22 while there were defendants accused in criminal cases --

23 THE COURT: You never saw them -- at least you
24 don't allege that you ever saw them. It's because there
25 were notations on his blotter, there were calendar entries.

1 MS. MEMBLATT: It was more than --

2 THE COURT: But you never saw them engage in any
3 sort of sexual acts.

4 MS. MEMBLATT: No, but she made -- the party that
5 we're talking about made statements to me directly about it,
6 like I've said. There was no question in my mind about it.

7 THE COURT: Okay, Ms. Memblatt, I'm just trying to
8 give you -- again, you're coming to a different court
9 system. You're an attorney. You're going to research the
10 law. They're going to make their motions, you're going to
11 put in your opposition.

12 But I'm trying to tell you on first blush, reading
13 your complaint, that your complaint is a laundry list -- and
14 I get this quite often in employment cases -- of things that
15 went wrong on the job, things that went wrong between you
16 and the secretary; things that went wrong between you and
17 other people who came to speak to you, that they were
18 constantly laughing, people who came into chambers.

19 MS. MEMBLATT: Judge, with all due respect, you
20 know, I think that's most unfair.

21 THE COURT: That's what the allegations say, Ms.
22 Memblatt. I'm not making this up.

23 MS. MEMBLATT: I think this is -- we live in the
24 reality of a political environment. None of us is naive not
25 to know that it exists and not to know that these jobs are

1 under political control. Not to know that --

2 THE COURT: That's how you got your job, Ms.
3 Memblatt.

4 MS. MEMBLATT: Your Honor, most respectfully, it
5 has been held, I believe, that there is no issue as to
6 whether -- how someone came in does not affect any waiver of
7 their rights.

8 THE COURT: I'm not saying waiver of anything, Ms.
9 Memblatt. I'm just saying you're giving me, which it's a
10 different system -- thank goodness we don't have elected
11 judgeships in the federal court system, so it is not -- and
12 again, it's thought about in the senate, on the senate
13 floor, whether somebody should be approved, but it is not
14 something that goes through the political system in each
15 election term.

16 But what I'm saying to you is you came into this
17 system through the democratic club. You say you were then
18 ostracized from the continental, regular, democratic club
19 because of some rift between two people, and this is way
20 back in the '90s. So you're telling me that I should -- you
21 know, all of us live in this political environment. I don't
22 particularly live in that political environment.

23 I'm not part of the state court system. But I'm
24 saying as a lawyer looking at your complaint, a lot of what
25 your complaint is talking about is interpersonal dealings

1 with court officers who are coming in. And again, a lot of
2 it is just grist for the mill, as far as I'm concerned.

3 MS. MEMBLATT: Judge, I'm content to -- I think
4 that under the rules for motions to dismiss, where
5 allegations have to be taken as true --

6 THE COURT: It's not that we're not going to take
7 the allegations as true. It's whether or not they can
8 support a Section 1983 constitutional claim. This is not a
9 claim that you get to make in a state court action. It's
10 not a tort in the regular sense, ma'am.

11 MS. MEMBLATT: Absolutely, Judge, but the reality
12 is what the reality is. This is something that did happen
13 in the state system, under a political machine. And when we
14 get -- when this comes to a trial, which I believe it will
15 come to a trial unless there is a settlement, I will be
16 asking the Court to instruct the jury that this solely
17 involves the state system and that nothing that is brought
18 up in the complaint should be taken as any reflection of any
19 kind involved with the federal system.

20 THE COURT: Well, we have a long way to go, Ms.
21 Memblatt, before we get to jury instructions in such a case.
22 Let me get to the defendants' intention here, so that we
23 don't spin our wheels unnecessarily.

24 What are the defendants asking for in terms of
25 time to file the motion?

1 MR. SPERES: Your Honor, I was hoping until
2 November 21st, if that's possible.

3 THE COURT: Ms. Memblatt, how much time would you
4 like to oppose the motion?

5 MS. MEMBLATT: Judge, most respectfully, the
6 defendants have had an inordinate amount of time.

7 THE COURT: Ms. Memblatt, I'm asking you, if I'm
8 granting them until November 21st to file the motion, how
9 long do you need after that?

10 MS. MEMBLATT: Judge, I would ask for five weeks
11 after that.

12 THE COURT: That's fine.

13 MS. MEMBLATT: However, Judge, they've just asked
14 for -- in their last papers, I think they were asking for --

15 THE COURT: Ma'am, we're talking about November
16 21st. We're talking eleven days from today. I'm not
17 scheduling it any sooner than that, so let's not argue about
18 things that we're not going to argue about. If you want
19 five weeks after that, I'll count the five weeks. That's
20 not a problem.

21 MS. MEMBLATT: Okay.

22 THE COURT: So let's get that ironed out. And
23 everybody else is on that same schedule.

24 MS. UNGER: Yes, Judge.

25 THE COURT: Okay. November 21st. You want five

1 weeks. That puts you to December 26th. Do you want to do it
2 after New Year's?

3 MS. MEMBLATT: Well, you know, Judge, I really
4 think it's unfair, under my economic circumstances, for this
5 to be delayed even longer.

6 THE COURT: Ms. Memblatt, we're talking eleven
7 days from now for them to file a motion. You are not going
8 to be able to get any sort of relief quicker than that,
9 okay? You want the five weeks. That puts us to December
10 26th. Is that what you want to file your -- serve your
11 opposition by, or do you want more time than that?

12 MS. MEMBLATT: No, that's when I want to file my
13 opposition.

14 THE COURT: Okay, December 26th, and that means
15 that we're into 2006 calendar for the reply. In the federal
16 system, the motion is not filed with the Court until it is
17 complete, meaning that the opposition and the reply and the
18 motion are filed all on the same date. So from December
19 26th, the two weeks comes to January 9th. There are two days
20 out of those weeks where the Court is closed. So if you
21 need to January 12th, I would consider that.

22 MS. MEMBLATT: Your Honor, might I ask, is it
23 possible that it could be made in such a way that if I get
24 my opposition to the motions in sooner, then the two weeks
25 would run from whenever it is it comes in?

1 THE COURT: No, because there are holiday periods
2 and people need to know what their lives are. So January
3 12th for the fully briefed motion to be filed with the Court.

4 Ms. Memblatt, even though you're representing
5 yourself, which in the circuit, you will be held to higher
6 standards, in this Court, there are special rules under Rule
7 12.1 or 56.2 of notice that must be required with any motion
8 when there's a pro se litigant on the other side. So I ask
9 you to observe those special provisions of notice.

10 MS. MEMBLATT: Could I just get those dates again,
11 please?

12 THE COURT: Certainly. November 21st is when they
13 will serve on you, and I want it to be in her hands on those
14 dates. So if you have to overnight it to her the night
15 before, do so.

16 Do you receive overnight mail at your present
17 address?

18 MS. MEMBLATT: Yeah, it's my home address.

19 THE COURT: But you can get Federal Express there.

20 MS. MEMBLATT: I certainly can get Federal Express
21 there.

22 THE COURT: I'm just making sure because again,
23 I'm sure they're going to want to have a tracking slip to
24 make sure that it's been delivered within the time frame.
25 And then you are going to have the five weeks, which gets us

1 to December 26th. December 26th is when your opposition will
2 be due. They have to get it by that date. Then they will
3 have until January 12th to file the fully briefed motion with
4 the Court.

5 I'll ask Mr. Speres to take the laboring oar, to
6 make sure that the entire motion is filed with the Court.
7 You can filed yours ECF. I don't know whether Ms. Memblatt
8 is going to have individual oppositions or whether she's
9 going to do one joint opposition to everybody's motion.

10 MS. MEMBLATT: It would be more likely that I
11 would do joint.

12 THE COURT: I understand that, and that's why I
13 was saying it that way. Yes, somebody has a question.

14 MS. UNGER: Just one question. I anticipate that
15 one of our exhibits, if not the only exhibit --

16 THE COURT: You're not going to have any exhibits.
17 Why? This is a motion to dismiss, it's not a motion for
18 summary judgment. If you have exhibits, it has to be
19 converted, and we're not doing summary judgment. We're
20 doing motion in lieu of answer. You can use anything that
21 she has in her complaint -- that's attached by reference,
22 that's a pleading. If you use anything outside the
23 pleadings, you are out of the box for 12(b) relief and
24 you're put over into summary judgment, at which point there
25 will be discovery.

1 MS. UNGER: No, I was referring to the complaint,
2 your Honor.

3 THE COURT: Okay.

4 MS. MEMBLATT: Your Honor --

5 THE COURT: Wait. I'm going down the list. I'll
6 get back to you.

7 MS. MEMBLATT: Sorry.

8 MR. SPERES: Your Honor, my only question -- when
9 I said November 21st, I assume I would be serving it --
10 that's a Monday. I'd have to serve it on the previous
11 Friday then, in order for Ms. Memblatt to have it on the
12 21st.

13 THE COURT: You have to have it delivered to her.
14 You have messengers. You can have it delivered to her.

15 MR. SPERES: Okay.

16 THE COURT: She's arguing with me about that date,
17 so I don't think it's a good thing for you to now --

18 MR. SPERES: I'm sorry. When I said it, I just
19 assumed that that would be the date that I would serve by
20 overnight mail, so she would have it on the 22nd. But if you
21 want her to have it on the 21st --

22 THE COURT: Well, because you are requesting
23 additional time now, I think having it in her hand by the
24 end of that day is what you need to do, with some proof of
25 that.

1 Yes, Ms. Memblatt.

2 MS. MEMBLATT: When you were addressing before the
3 matter involving discovery and the initial order that you
4 had issued, I am not aware of any point before you issued
5 that order that the defendants had directly addressed any
6 application for staying discovery. It is my impression that
7 what happened was that once you issued your order, I did the
8 steps that I felt obligated to do by the terms of your
9 order, and they simply refused to comply with it.

10 And it was not until I wrote a letter to your
11 Honor to advise your Honor of their failure to comply with
12 it that they did anything to request any kind of stay with
13 respect to the discovery. And even then, it was only Mr.
14 Quinn who did so. So I would just like to clarify with your
15 Honor; is it appropriate for the defendants, in the event
16 that they disagree with the terms of an order that you have
17 issued, to simply disregard it. Or, your Honor, are they
18 required to --

19 THE COURT: No, of course not, Ms. Memblatt. But
20 I do think that there was a misunderstanding because again,
21 in the district court, in the federal system, you're paired
22 up with a district judge and a magistrate judge. I was
23 alerted that there was some application to Judge Dearie. I
24 hadn't seen the application to Judge Dearie.

25 So again, this happened also back in April, where

1 Judge Dearie had relieved the defendants of the obligation I
2 had scheduled the defendants to respond to the complaint.
3 So we were working not at cross-purposes but, unfortunately,
4 we were both issuing orders on the same case because the
5 application was being made to Judge Dearie.

6 Everything is electronically filed in the Court,
7 so whenever I'm the assigned magistrate judge on a case,
8 even though it may have been made to Judge Dearie, I am
9 getting an electronic notice of it. Generally speaking, the
10 litigants appearing in the federal district court in
11 Brooklyn know that pretrial matters are referred to the
12 magistrate judges. So it's somewhat automatic that the
13 magistrate judge picks up the application on the electronic
14 bounce and deals with it.

15 In this particular case, for whatever reason,
16 Judge Dearie was likewise picking up the bounce, and that's
17 why I think there was some confusion about who was handling
18 the case. No, they cannot just refuse to comply with an
19 order if they disagree. I think that Mr. Renfro's request
20 or Mr. Quinn's request --

21 MS. MEMBLATT: Mr. Quinn's.

22 THE COURT: -- was the test balloon, perhaps, that
23 the defendants were sending up to see what their obligations
24 were going to be. They didn't necessarily, all three
25 attorney groups at the table make the request. But when one

1 was relieved of the obligation, I'm sure that that was
2 shared with the others.

3 At this point in time, because there is a motion
4 scheduled, we're not going backwards to readdress those
5 questions. There is nothing that's going to --

6 MS. MEMBLATT: I just meant in terms of the
7 future, since they've now --

8 THE COURT: Discovery is going to be stayed until
9 the conclusion and adjudication of the motion.

10 MS. MEMBLATT: Yes, Judge. What I really meant
11 was in terms of the issuance of an order. That's what I'm
12 speaking of. To me, even if they thought their motions to
13 -- their writings to dismiss should have adequately
14 addressed that or stayed that, yet they've received the
15 order of a magistrate judge, which was quite clear and
16 direct.

17 So it was my impression that the appropriate way
18 to proceed would have been to raise that immediately with
19 your Honor, rather than simply taking the position that they
20 had no such obligation and waiting until I brought it to the
21 Court's attention.

22 THE COURT: Ms. Memblatt, I wouldn't disagree with
23 you. But as I said, I'm very pragmatic. We have enough to
24 deal with and we're moving forward. So I would agree with
25 you that yes, you get an order of the Court, you obey the

1 order or you file something saying why you believe you're
2 not going to have to obey the order. But I'll chalk it up
3 because I try to give everybody in the first instance the
4 benefit of the doubt that there was some confusion about who
5 was overseeing the case, whether it was Judge Dearie or it
6 was me. I think everybody is now on notice that I'm
7 overseeing all pretrial, and so if there are any requests
8 that affect pretrial --

9 What that means, however, is that the motion is
10 going to go to Judge Dearie. Judge Dearie has the option of
11 referring it to me, but it's not automatic because it's a
12 dispositive motion, which, if granted, would dispose of the
13 case. This is under 28 United States Code 636 that sets up
14 the duties of the magistrate judge.

15 Under 636(b), I can only deal with dispositive
16 motions as a referral from a district judge on report and
17 recommendation. That's the system. I deal with all
18 pretrial matters under 636(a). You don't get any choice and
19 I get to rule on any pretrial matters without it going to
20 the district judge, okay?

21 MS. MEMBLATT: Thank you, Judge.

22 THE COURT: We have a schedule now set. Everybody
23 understands that discovery will be stayed until after the
24 motions have been decided. Everybody understands that it is
25 a motion in lieu of an answer under 12(b), so it is the four

1 corners of the pleadings. We do not refer to matters
2 outside the pleadings. So yes, you do take everything Ms.
3 Memblatt says as true and the arguments have to be legal
4 arguments as to why that would fail to state a claim under
5 the statute.

6 There is nothing further that I need to do today,
7 except to make sure that everybody is clear that Ms.
8 Memblatt is entitled to serve one joint opposition. That
9 opposition will be sent to Mr. Quinn's office, to Mr. Speres
10 and to Ms. Egelfeld for -- both of you are there for the
11 same defendants.

12 MS. UNGER: Yes.

13 THE COURT: But when you're sending to Mr. Speres,
14 you need to send him the original and two copies. Everybody
15 else just gets one copy. He gets an original and two copies
16 because he is going to file the fully briefed motion with
17 the Court on January 12th, which will be your original. One
18 copy of yours as a courtesy copy to Judge Dearie's chambers.
19 You do not file with the Court on the December 26th date.
20 You just have to make sure that he has in hand your original
21 and two copies and that the other defendants are served.

22 MS. MEMBLATT: Okay. So I just check with the
23 clerk's office to make sure that he filed everything,
24 including my original; is that it?

25 THE COURT: In January.

1 MS. MEMBLATT: In January, when he files
2 everything.

3 THE COURT: Exactly. It's the fully briefed
4 motion. We don't look at it until it's fully briefed.

5 MS. MEMBLATT: Thank you.

6 THE COURT: What is the problem at the defense
7 table?

8 MR. SPERES: Your Honor, the 26th is the recognized
9 holiday because Christmas falls on the 25th. Therefore,
10 Monday, the office is closed.

11 THE COURT: So the 27th.

12 MR. SPERES: Martin Luther King day, is that the
13 12th or is that the following week?

14 THE COURT: I'm looking.

15 MS. MEMBLATT: That's January 17th.

16 MR. SPERES: Okay.

17 THE COURT: It's the 16th this year, Ms. Memblatt.
18 You were on 2005, I bet.

19 MS. MEMBLATT: Yes, I'm sorry, your Honor.

20 THE COURT: Because this year, Martin Luther King
21 is the 16th. So just to reiterate, November 21st, the papers
22 will be served on Ms. Memblatt from all defendants. She
23 will get them on that date. On December 27th, Ms. Memblatt,
24 you will have served the original and two copies to Mr.
25 Speres's office. You can do it by mail, as long as it will

1 arrive on the 27th, in both Mr. Quinn and Ms. Egelfeld's
2 office. Then on January 12th, 2005, Mr. Speres will file the
3 fully briefed motion.

4 The defendants that are not filing their fully
5 briefed can file it electronically on that date, because
6 he's going to have Ms. Memblatt's papers. They will take
7 care of it. I know your office is quick to do that because
8 they have more than one pro se litigant on the other side.

9 In other words, Ms. Memblatt, this is a fully ECF
10 court, an electronic case filing court. Where there are
11 attorneys on both sides, attorneys have to register for ECF
12 and everything is done electronically. It's turning to
13 paperless. The exception to that is the pro se docket.
14 Since pro se litigants often can't file things
15 electronically, if it's a pro se case, it's outside of the
16 electronic filing rule.

17 So the attorneys, meaning Ms. Egelfeld and Mr.
18 Quinn, can file electronically on that date. She must be
19 served still with the reply but you can file it on that
20 date. Mr. Speres is going to take the fully bundled motion,
21 which will have Ms. Memblatt's opposition, and have it filed
22 by the 12th of January.

23 MR. SPERES: Your Honor, just to clarify one
24 thing. Do you want me to file it ECF by scanning or just
25 file her original?

1 THE COURT: Whatever your office does, because
2 this is not the only pro se case in your office. Again, you
3 need to have the courtesy copy -- she's going to give it to
4 you -- delivered to Judge Dearie.

5 MR. SPERES: Not a problem.

6 THE COURT: But as far as whatever they do,
7 whether they scan it in or they deliver it to the Court for
8 the Court to scan in, I can't tell you, okay?

9 MR. SPERES: A lot of times it depends on the
10 judge. That's why I asked.

11 THE COURT: Well, everybody is now electronic
12 filing in this district. If they have the capacity to scan
13 everything in in your office, so be it. But I would imagine
14 that you're going to file the original in hard copy and that
15 the Court is going to scan it in. That's what I think is
16 going to happen.

17 MS. MEMBLATT: I'm giving Mr. Speres the original
18 and two copies. I'm giving Ms. Egelfeld one. I'm giving
19 Mr. Quinn also one copy.

20 THE COURT: Exactly.

21 MS. MEMBLATT: And that's it.

22 THE COURT: And the one that you send the original
23 to Mr. Speres will just have your proof of service on all
24 the defendants attached to that one, and then the Court will
25 know that everybody has done their business, okay?

1 Is there anything else that I need to address
2 today, Ms. Memblatt?

3 MS. MEMBLATT: No, your Honor, thank you very
4 much.

5 THE COURT: Is there anything further today, Ms.
6 Egelfeld?

7 MS. EGELFELD: No.

8 THE COURT: Anything further, Mr. Speres?

9 MR. SPERES: Nothing, your Honor.

10 THE COURT: Anything further, Mr. Quinn?

11 MR. QUINN: No, thank you, your Honor.

12 THE COURT: Then this matter is adjourned. Thank
13 you.

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I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in
the above-entitled matter.

A handwritten signature in black ink, appearing to read 'E. Barron', with a long horizontal stroke extending to the right.

ELIZABETH BARRON

November 14, 2005